principles applicable to the intimate physical encounters with nude performers involved in the cases cited by the City and the Court of Appeals (App. A at 13a) may not be constitutional when applied to conversations with dancers in bikinis. *See* Pet. at 15-18, 27-28; *Mendoza v. Licensing Board of Fall River*, 444 Mass. 188, 197, 827 N.E.2d 180, 188 (2005).

However, the Court of Appeals justified the restrictions on the dancers' expression with an analysis appropriate only to extremely explicit performances. It equated the "erotic messages" conveyed by contact-free conversations between clothed dancers and patrons with the crude communication imparted by the fondling of dancers' exposed breasts in *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), and the close-up displays of genitalia in *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1988). (App. A at 13a.) Likewise, although the Court acknowledged that "There is certainly a point along the continuum where suggestive speech no longer falls within the 'sexual or pornographic'" category, and that "this case pushes us closer to that point than those cases where performers are nude or topless," it gave that distinction no effect, and "reviewed the Ordinance as a regulation of 'sexual or pornographic' speech" precisely like those at issue in *Kev* and *Colacurcio*. (App. A at 15a-16a.)

The Ninth Circuit's one-size-fits-all approach to adult entertainment is inconsistent with the measured principles applied in other jurisdictions, and requires review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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